



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 8, 1996

Mr. John S. Schneider, Jr.
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501

OR96-0002

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37398.

The City of Pasadena (the "city") received a request for all information in the Pasadena Police Department's files concerning any applications, training accommodations, reprimands, complaints, grievances or disciplinary actions pertaining to seven Pasadena police officers from January, 1990 to the date of the request, including information regarding internal investigations of such complaints, the final determination of such complaints, and copies of all letters advising of disciplinary action regarding any such complaints. You claim that the requested information is excepted from disclosure under section 143.089(g) of the Local Government Code as applied through section 552.101 of the Government Code, the officers' right to privacy under section 552.101 of the Government Code, and 552.117 of the Government Code. We have considered the exceptions you claimed and have reviewed the documents at issue.

Section 143.089 of the Local Government Code works in conjunction with section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the police department is required to maintain as part of the police officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g). You represent that the documents submitted to this office for review are part of the police department's personnel files rather than the civil service files.

Therefore, we are considering only those files which may be maintained by the police department for its own internal use under section 143.089(g).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

In *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the personnel files maintained under section 143.089(a). Such records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 (1990) at 6.

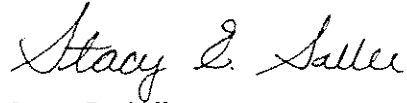
It appears from the documents submitted that at least four of the police department's internal investigations may have resulted in disciplinary action. Information maintained by the police department that relates to the investigations that did not result in disciplinary action must be withheld from required public disclosure under section 552.101 of the act in conjunction with section 143.089(g) of the Local Government Code.¹ However, if any of the internal affairs investigations did result in disciplinary action, then "any record, memorandum, or document relating to" the disciplinary action must be placed in the personnel files maintained by the civil service commission under section 143.089(a) and must be released by the civil service commission under section 143.089(f) of the Local Government Code.²

¹We also note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

²The city has indicated that some of the documents have been destroyed. We assume that this was done in compliance with the city's record retention schedule. The Open Records Act does not require a governmental body to make available information which does not exist. Open Records Decision No. 362 (1983); see Open Records Decision Nos. 452 (1986), 476 (1987).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 37398

Enclosures: Submitted documents

cc: Mr. Richard L. Moore
Richard L. Moore & Associates
225 South Heights Boulevard
Houston, Texas 77007-5897
(w/o enclosures)